Supreme Court, U.S.
FILED
FEB 16 1999
CLERK

No. 98-1122

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

ABDUL AZIZ,

Petitioner,

vs.

ORBITAL SCIENCES CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

EDWARD R. NOONAN
JEFFREY E. WEINSTEIN
TIMI E. NICKERSON*
ECKERT SEAMANS CHERIN
& MELLOTT, LLC
Attorneys for Respondent
1250 24th Street, N.W.
Suite 700
Washington, D.C. 20037
(202) 659-6600

* *Counsel of Record*

151269

Counsel Press LLC
FORMERLY LUTZ APPELLATE SERVICES
(800) 274-3321 • (800) 359-6859

34 pp

QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Fourth Circuit erred in affirming the decision of the District Court for the Eastern District of Virginia when, pursuant to applicable law, it dismissed the Petitioner's case for lack of jurisdiction for failing to file the Complaint within the statute of limitations under Title VII and/or the Age Discrimination Employment Act.

2. Whether the Court of Appeals for the Fourth Circuit erred in affirming the decision of the District Court for the Eastern District of Virginia when it determined that no facts existed to support an equitable tolling of the statute of limitations, notwithstanding Plaintiff's *pro se* status.

STATEMENT PURSUANT TO RULE 29.6

Orbital Sciences Corporation is a publicly-held corporation, having no parent corporation or affiliates or subsidiaries.

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Orbital Sciences Corporation ("Orbital") respectfully submits this brief in opposition to the Petition for Writ of Certiorari filed by Mr. Abdul Aziz ("Aziz").

STATEMENT OF THE CASE

On April 8, 1997, Aziz filed Case No. 1-97-CV-00692 in the United States District Court for the District of Columbia ("District Court for the District of Columbia") against Orbital. Aziz's suit was brought under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C.A. § 2000e-5 (1994), and the Age Discrimination Employment Act of 1967 ("ADEA"), 29 U.S.C.A. § 621 *et seq.* (1991 and West Supp. 1997). Aziz filed the Complaint in response to a right to sue letter from the Equal Employment Opportunity Commission ("EEOC Dismissal") dismissing Aziz's allegations of discrimination against Orbital based on race, national origin, and age.

On May 7, 1997, Orbital filed a Motion to Dismiss or for Change of Venue. Orbital's motion was based on: (1) Aziz's failure to properly serve process upon Orbital; and (2) Aziz's failure to file the case in the proper forum as provided for by the Title VII venue provision. In the alternative, Orbital argued that the proceeding should be transferred to the United States District Court for the Eastern District of Virginia ("Eastern District") where venue was proper under Title VII.

By Order dated May 22, 1997, the District Court for the District of Columbia advised Aziz of Orbital's contention that service was improper, and provided Aziz a copy of Rule 4 of the Federal Rules of Civil Procedure ("F.R.C.P."), which sets forth the procedures for proper service of process. (Resp. App. at 7a-8a.) Aziz, however, did not attempt to cure the improper service on Orbital. By an Order filed June 30, 1997, the District Court for the District of Columbia transferred the case to the

Eastern District. In its Order, the court this time also notified Aziz that he had until August 6, 1997, to properly serve the Summons and a copy of the Complaint on Orbital. (Resp. App. at 5a.)

On September 12, 1997, after the case was transferred to the Eastern District of Virginia, Orbital filed a Motion to Dismiss pursuant to F.R.C.P. Rules 4 and 12(b)(5). The basis for that motion was that, as of that date, and despite express notice to do so, Aziz had failed to serve Orbital with a copy of the Summons and Complaint within 120 days of the filing thereof, as required by F.R.C.P. Rules 4(c) and 4(m).

On October 10, 1997, Judge T.S. Ellis, III presided at a hearing on Orbital's Motion. Despite being sent notice of the hearing in the Eastern District, Aziz chose not to attend this hearing. (Resp. App. at 11a.) On October 14, 1997, the Eastern District issued an Order granting Orbital's motion, and dismissed Aziz's complaint without prejudice. The Eastern District found that Aziz had not served Orbital within 120 days of filing the Complaint as required by F.R.C.P. Rule 4(m). The court's Order noted that Aziz had been instructed by the court in the District of Columbia as to the date by which he was required to serve Orbital.

On November 3, 1997, Aziz refiled his Complaint in the Eastern District. Aziz served process on Orbital on December 4, 1997. In response, on December 22, 1997, Orbital filed a Motion to Dismiss pursuant to F.R.C.P. Rule 12(b)(6), on the grounds that the action was barred by the statute of limitations for filing an action in district court under Title VII and the ADEA.[1] Aziz did not file a response to Orbital's Motion to Dismiss.

1. Aziz asserts in his Petition before this Court that "there is no record of a 12(b)(6) motion in the file." (Petition at 3). This is incorrect, as is evident from the record. The Eastern District's January 16, 1998, order specifically notes that "[t]his matter came before the Court on defendant's motion to dismiss pursuant to Rule 12(b)(6), Fed. R. Civ. P. . . ." Thus, contrary to Aziz's second argument on page 3 of his Petition, there is no question that a Rule 12(b)(6) motion was filed in this case.

On January 16, 1998, a hearing was held on Orbital's Motion to Dismiss before Judge Ellis in the Eastern District.[2] Aziz chose not to attend the hearing, just as he had failed to attend the October 1997 hearing on Orbital's first motion. The Eastern District dismissed Aziz's complaint, finding that Aziz's Complaint, filed on November 3, 1997, had been filed outside the 90 day statute of limitations applicable to such actions. That statute of limitations ran on or about June 5, 1997.

On or about February 27, 1998, Aziz appealed the Eastern District's January 16, 1998, order to the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit") (Case No. 98-1281). Aziz asserts in his Petition for Certiorari that he was not given an opportunity to file a motion to recall the mandate as instructed by the Fourth Circuit Clerk. (Petition at 2-3.) In fact, Aziz did file such a motion. On April 1, 1998, the Fourth Circuit dismissed the appeal for want of prosecution after twice notifying Aziz that it would dismiss the case if he did not respond by certain dates.[3] On April 9, 1998, Aziz filed Appellant's Motion Appealing for Recalling the Mandate. (Resp. App. at 15a.) The Fourth Circuit reinstated the case on that same date.

---

2. As required under the Eastern District's rules, Counsel for Orbital notified Aziz of the January 16, 1998, hearing on Orbital's Motion to Dismiss. (Resp. App. at 9a.) Nevertheless, Aziz chose not to attend this hearing. Aziz's assertions that he was prejudiced in some way by not having a record of the January 16, 1998, hearing is disingenuous, given his decision not to attend such hearing.

3. The Fourth Circuit notified Aziz on February 27, 1998, and again on March 11, 1998, to pay the Court's filing fee. (Resp. App. at 22a, and at 18a, respectively.) In these notices, the Fourth Circuit instructed Aziz that, unless payment was made by March 26, 1998, the court would dismiss the case.

Aziz also asserts in his Petition that "Since the petitioner did not file an appeal, the appeals court opinion is no longer the issue." (Petition at 6.) The Fourth Circuit record shows that Aziz was ordered to file Appellant's Brief not later than May 11, 1998, and Orbital's response was due not later than 14 days after service of appellant's informal brief.[4] Aziz, in support of his appeal, filed a document entitled "Appellant's Informal Brief" on April 7, 1998. (Resp. App. at 13a.) In this document, Aziz requested that the Fourth Circuit order the Eastern District to furnish Aziz a copy of the "transcript" of the January 16, 1998, hearing before the Eastern District. Because Aziz's motion did not argue any substantive reasons for overturning the lower court's decision, Orbital filed Appellee's Motion to Dismiss for Failure to File an Informal Brief or in the Alternative Appellee's Response to Appellant's Informal Brief.

The Fourth Circuit affirmed the Eastern District's order on October 19, 1998, holding that: (1) Aziz had failed to file a complaint within the 90-day period required by Title VII and the ADEA; and (2) nothing in the record suggested that Aziz was entitled to equitable tolling of this statutory time period.

REASONS FOR DENYING THE WRIT

AZIZ HAS FAILED TO ALLEGE ANY ERROR COMMITTED BY THE FOURTH CIRCUIT IN AFFIRMING THE DECISION OF THE EASTERN DISTRICT OF VIRGINIA

Aziz's Petition based jurisdiction on Supreme Court Rule 10(c); however, the Petition fails to state a basis for jurisdiction in this Court. Pursuant to Rule 10(c), this Court, in its discretion, grants certiorari when it considers

4. The Fourth Circuit has provisions that permit *pro se* parties to file informal briefs with less stringent requirements than those imposed on counsel filing briefs. *See* Fourth Circuit Local Rule 34(b).

> a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

S. Ct. R. 10(c). Aziz alleged no facts in his Petition to support jurisdiction based on Rule 10(c). Furthermore, Aziz's Petition fails to allege that either the Eastern District or the Fourth Circuit committed any errors in their decisions in this case. Instead, the "Questions Presented" contained in Aziz's Petition are based on premises that have no basis in fact or law.

In his first "Question Presented," Aziz alleges that the Eastern District "denied" (*i.e.*, refused) to issue a transcript of the January 16, 1998, hearing. Aziz asserts that the Eastern District of Virginia refused to give him a copy of the transcript of the oral argument from the January 16, 1998, hearing. (Petition at 4.) It is the responsibility of the party seeking an appeal to obtain copies of transcripts of relevant hearings and "to take any other action necessary to enable the clerk to assemble and transmit the record." *See* Fed. R. App. P. 10(b), 11(a). Aziz could have learned what transpired at the January 16, 1998, hearing simply by showing up at that hearing. Instead, he chose for a second time not to attend the hearing despite written notice from Orbital's counsel of the hearing date. (Resp. App. at 9a.)

In his second "Question Presented," Aziz appears to imply that the Fourth Circuit improperly ruled in this case even though Aziz allegedly had not formally filed an "informal" brief. Aziz, however, had the opportunity to file a brief with the Fourth Circuit. Aziz cannot correctly claim, as he does in his Petition, that he somehow was prevented from preparing a proper brief because the Eastern District "failed" to give him a transcript of the January 16, 1998, hearing.

In his third "Question Presented," Aziz asserts that the Fourth Circuit "by use of trick and threat" "forced" him to present "partial facts" to the court. As set forth above, however, Aziz was free to present whatever arguments he chose to the Fourth Circuit.

There is no question that both the Eastern District and the Fourth Circuit ruled correctly in this case. The Eastern District properly granted Orbital's 12(b)(6) motion because Aziz did not file a timely complaint pursuant to Title VII and the ADEA, and Aziz had not presented any reasons for that court to equitably toll the statute of limitations. The Fourth Circuit affirmed the Eastern District's dismissal order, finding that Aziz had failed to file a complaint within the 90-day period required by Title VII and the ADEA, and that nothing in the record suggested that Aziz was entitled to equitable tolling of this statutory time period.

CONCLUSION

Thus, because Aziz has not alleged any error committed by the Eastern District or the Fourth Circuit in this case, and because those courts ruled correctly, in accordance with applicable law, there is no basis for this Court to exercise its discretionary review power to grant Aziz's Petition for a Writ of Certiorari.

Respectfully submitted,

EDWARD R. NOONAN
JEFFREY E. WEINSTEIN
TIMI E. NICKERSON*
ECKERT SEAMANS CHERIN
& MELLOTT, LLC
Attorneys for Respondent
1250 24th Street, N.W.
Suite 700
Washington, D.C. 20037
(202) 659-6600

* *Counsel of Record*

APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DATED AND DECIDED OCTOBER 19, 1998

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-1281

ABDUL AZIZ,

Plaintiff-Appellant,

v.

ORBITAL SCIENCES CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
T. S. Ellis, III, District Judge.
(CA-97-1769-A)

Submitted: September 30, 1998

Decided: October 19, 1998

Before ERVIN, LUTTIG, and WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Abdul Aziz, Appellant Pro Se. Edward R. Noonan, ECKERT, SEAMANS, CHERIN & MELLOTT, Washington, D.C., for Appellee.

Appendix A

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Abdul Aziz appeals the district court's order granting Orbital Sciences Corporation's (Orbital's) motion to dismiss this action, filed pursuant to Title VII, 42 U.S.C.A. §§ 2000e to -17 (West 1994 & Supp. 1998), and the Age Discrimination in Employment Act (ADEA), 29 U.S.C.A. §§ 621-634 (West 1985 & Supp. 1998). Orbital moved to dismiss the action on the ground that it was untimely filed. The district court held a hearing on the motion, which Aziz did not attend, and granted the motion to dismiss.

Title VII and the ADEA allow an aggrieved party ninety days after receipt of a right-to-sue letter from the EEOC to file a civil action. 42 U.S.C. § 2000e-5(f)(1); 29 U.S.C. § 626(e). A claimant who fails to file a complaint within the ninety-day statutory time period generally forfeits his right to pursue his claim. *See Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 149-51 (1984). The time period is subject to equitable tolling, *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982), but one who fails to act diligently cannot invoke equitable principles to excuse lack of diligence. *Hallstrom v. Tillamook County*, 493 U.S. 20, 27 (1989).

Here, Aziz was mailed his right to sue letter on March 4, 1997. He filed an initial, timely action in the District of Columbia District Court. Orbital filed a motion to dismiss for inadequate service of process or for change of venue. The case was transferred to the Eastern District of Virginia. The district

court informed Aziz that he had until August 6 to serve Orbital under Fed. R. Civ. P. 4. Orbital again moved to dismiss, and following a hearing that Aziz did not attend, the district court dismissed the action without prejudice for improper service of process. Aziz refiled his complaint on December 4, 1997, 275 days after the right to sue letter was issued and fifty-one days after the first action was dismissed. At a hearing that Aziz did not attend, the district court granted Orbital's motion to dismiss.

A dismissal without prejudice does not toll the statutory period for filing an action. *Chico-Velez v. Roche Prods., Inc.*, 139 F.3d 56, 59 (1st Cir. 1998). Nothing in the record suggests that Aziz is entitled to equitable tolling of the statutory time period. Therefore, although we deny Orbital's motion to dismiss the appeal, we affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA DATED JUNE 27, 1997 AND FILED JUNE 30, 1997

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 97-0692 (PLF)

ABDUL AZIZ,

Plaintiff,

v.

ORBITAL SCIENCES CORPORATION,

Defendant.

MEMORANDUM OPINION AND ORDER

On April 8, 1997, plaintiff, proceeding *pro se*, filed a complaint alleging that defendant failed to hire him based on his age in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq.*, and Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq*. Defendant Orbital filed a motion to dismiss or for change of venue, arguing that it was never served with a copy of the complaint as required by Rule 4, Fed. R. Civ. P., but only with a summons, and furthermore that this case properly belongs in the Eastern District of Virginia.

The Court issued two orders, the first one informing plaintiff of his obligation to respond to defendant's dispositive

motion, and the second order informing plaintiff in more detail of his obligations under Rule 4, Fed. R. Civ. P., and the rules governing venue in Title VII cases.[1] Plaintiff subsequently filed a response stating that he "concurs with the order the defendant has submitted to the court along with his reply." *See* Pl.'s Final Response to Defendant's Motion to Dismiss or Transfer Venue (filed May 27, 1997).

The Court cannot discern from plaintiff's response whether he agrees that this case should be dismissed or transferred since defendant submitted two alternative motions with its reply. In any event, the case should be transferred because under 42 U.S.C. § 2000e-5(f)(3), venue is proper where the alleged employment action took place or where defendant would have worked had he gotten the job, in this case in Dulles, Virginia. In addition, based on the fact that all the events took place in Dulles, Virginia, the fact that defendant is located in Dulles and all the documents and witnesses are there and in view of plaintiff's acquiescence, the Court further finds that this case should be transferred to the Eastern District of Virginia for the convenience of the parties and witnesses pursuant to 28 U.S.C. § 1404(a).

While defendant maintains that it has not been properly served with the complaint, plaintiff has 120 days from the filing of his complaint to serve defendant, that is, until August 6, 1997. *See* Rule 4(m), Fed. R. Civ. P. Since plaintiff can cure this alleged defect of service by serving defendant properly with a summons along with a copy of the complaint before that time, the Court will not dismiss the case on that basis.

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1. The Court attached copies of Rule 4, Fed. R. Civ. P., and of the relevant code section, 42 U.S.C. § 2000e-5(f)(3), to the Order for plaintiff's benefit.

Appendix B

Accordingly it is hereby

ORDERED that defendant's motion to dismiss or to transfer is GRANTED in part and DENIED in part; and it is

FURTHER ORDERED that this case is TRANSFERRED to United States District Court for the Eastern District of Virginia; and it is

FURTHER ORDERED that the Clerk of the Court is directed to transfer plaintiff's entire file to the United States District Court for the Eastern District of Virginia.

SO ORDERED.

s/ Paul L. Friedman
PAUL L. FRIEDMAN
United States District Judge

DATE: 6/27/97

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA DATED AND FILED MAY 22, 1997

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 97-692 (PLF)

ABDUL AZIZ,

Plaintiff,

v.

ORBITAL SCIENCES CORPORATION,

Defendant.

ORDER

On May 15, 1997, the Court issued a so-called "*Fox* Order," namely, an Order informing plaintiff of his obligation to respond to defendant's motion to dismiss or for change of venue pursuant to *Fox v. Strickland*, 837 F.2d 507 (D.C. Cir. 1988). That Order gave plaintiff until June 19, 1997 to respond. On May 20, 1997, plaintiff filed a Memorandum to the Court, informing the Court that he had already responded to defendant's motion. The Court is now in receipt of plaintiff's response, which was filed on May 12, 1997 but not received by this Court prior to the issuance of the May 15 Order. Accordingly, in view of the contents of plaintiff's response and defendant's reply brief (which was filed on May 19, 1997), it is hereby

Appendix C

ORDERED that plaintiff shall have until June 19, 1997 to file any supplement to his response to defendant's motion. The Court calls to plaintiff's attention defendant's contention that plaintiff merely mailed a copy of the complaint to defendant's attorneys, and that such a mailing does not satisfy the requirements of Rule 4, FEDERAL RULES OF CIVIL PROCEDURE, a copy of which is attached for plaintiff's information. Plaintiff should also take note that the fact that Dulles, Virginia, is adjacent to the District of Columbia does not mean that venue is proper here. *See* 42 U.S.C. § 2000e-5(f)(3) (attached). Finally, if plaintiff wishes to argue that the District of Columbia is more convenient, he cannot merely assert the proposition but must allege specific facts regarding his place of residence and employment and those of defendants, the location of potential witnesses and documents, and provide any other concrete information that would demonstrate the convenience of this forum over Virginia.

SO ORDERED.

s/ Paul L. Friedman
PAUL L. FRIEDMAN
United States District Judge

DATE: 5/22/97

APPENDIX D — DEFENDANT'S NOTICE OF HEARING DATED JANUARY 2, 1998

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Case No. CA 97-CV-1769-A

ABDUL AZIZ,

Plaintiff,

v.

ORBITAL SCIENCES CORPORATION,

Defendant.

DEFENDANT'S NOTICE OF HEARING

Defendant, Orbital Sciences Corporation ("Orbital") respectfully requests this court to schedule a Hearing on Defendant's Motion to Dismiss pursuant to Local Rule 7(D) for the Eastern District of Virginia for Friday, January 16, 1998, at 10:00 a.m..

Respectfully submitted,

Date: January 2, 1998

s/ Jeffrey Weinstein
Jeffrey Weinstein, Esquire
(VA Bar No. 28919)
Eckert Seamans Cherin &
Mellott, LLC
1250 24th Street, N.W., Suite 700
Washington, D.C. 20037
(202) 659-6600

Attorney for Defendant
Orbital Sciences Corporation

Appendix D

CERTIFICATE OF SERVICE

I, Jeffrey Weinstein, Esquire, hereby certify that on January 2, 1998, I caused to be served a true and correct copy of the Motion for Admission Pro Hac Vice and the Notice of Hearing on Defendant's Motion to Dismiss on the pro se plaintiff:

Abdul Aziz
9179 Springhill Lane
Greenbelt, MD 20770-1245
[By First Class U.S. Mail]

s/ Jeffrey Weinstein
Jeffrey Weinstein, Esquire
(VA Bar No. 28919)
ECKERT SEAMANS CHERIN &
MELLOTT, LLC
1250 24th Street, N.W.
Suite 700
Washington, DC 20037
(202) 659-6600

APPENDIX E — DEFENDANT'S NOTICE OF HEARING DATED SEPTEMBER 25, 1997

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Case No. CA 97-1258-A

ABDUL AZIZ,

Plaintiff,

v.

ORBITAL SCIENCES CORPORATION,

Defendant.

DEFENDANT'S NOTICE OF HEARING

Defendant, Orbital Sciences Corporation ("Orbital") respectfully requests this court to schedule a Hearing on Defendant's Motion to Dismiss pursuant to Local Rule 7(D) for the Eastern District of Virginia for Friday, October 10, 1997, at 10:00 a.m..

Respectfully submitted,

Date: September 25, 1997

s/ Jeffrey Weinstein
Jeffrey Weinstein, Esquire
(VA Bar No. 28919)
Eckert Seamans Cherin &
Mellott, LLC
1250 24th Street, N.W.,
Suite 700
Washington, D.C. 20037
(202) 659-6600

Attorney for Defendant
Orbital Sciences Corporation

Appendix E

CERTIFICATE OF SERVICE

I, Jeffrey Weinstein, Esquire, hereby certify that on September 25, 1997, I caused to be served a true and correct copy of the Reply to Plaintiff's Response to Defendant's Motion to Dismiss, the Memorandum in Support of the Reply to Plaintiff's Response to Defendant's Motion to Dismiss, and the Notice for Hearing on the pro se plaintiff:

Abdul Aziz
9179 Springhill Lane
Greenbelt, MD 20770-1245
[By First Class U.S. Mail]

s/ Jeffrey Weinstein
Jeffrey Weinstein, Esquire
(VA Bar No. 28919)
ECKERT SEAMANS CHERIN &
MELLOTT, LLC
1250 24th Street, N.W.
Suite 700
Washington, DC 20037
(202) 659-6600

APPENDIX F — APPELLANT'S INFORMAL BRIEF DATED APRIL 7, 1998

U.S. DISTRICT COURT OF APPEALS :
FOR THE FOURTH CIRCUIT

Appeals Court No. 98-1281

District Court No. CA-97-1760-A

ABDUL AZIZ, Appellant,

v.

ORBITAL SCIENCES, Defendant.

APPELLANT'S INFORMAL BRIEF

1. Jurisdiction: U.S. District Court of Virginia in Alexandria.

2. Court order dated, January 16, 1998, dismissing the complaint.

Issue 1.

In the above court order, the court has used the phrase, "For the reasons stated from the bench." Appellant requested the court in writing and the court reporter by telephone three times each, and he himself went to the court one day, but could not yet procure the copy of the bench order (the transcript). Until he gets the copy of the said transcript he cannot raise any issue.

WHEREFORE, this humble plaintiff prays that the honorable appeals court order the district court to furnish the appeallant with a copy of the same document

Appendix F

Respectfully submitted.

Date Mailed: 4-7-1998 Phone: 301-513-994

s/ a. a.
Abdul Aziz, Ph.D. Appellant pro se, 9179 Springhill Lane, Marylan 20770-1245

CERTIFICATE OF SERVICE
I, hereby, certify that a true and correct computer copy of the above pleading was mailed by me to the following defense counsel today by first class USPS mail postage prepaid.

Mr. Jeffrey Weinstein
1250 24th Street. N. W.
SUITE 700
Washinton, D.C. 20037

s/ Abdul Aziz 5-7-98

APPENDIX G — APPELLANT'S MOTION APPEALING FOR RECALLING THE MANDATE DATED APRIL 6, 1998 AND FILED APRIL 9, 1998

UNITED STATES COURT OF APPEALS:
FOR THE FOURTH CIRCUIT

No. 98-1281

CA - 97 - 1769 - A
Motion to recall
Date Mailed: 4-6-98

ABDUL AZIZ, APPELLANT.

v.

ORBITAL SCIENCE, APPELLEE

APPELLANT'S MOTION APPEALING FOR RECALLING THE MANDATE

Appellant moves as follows:

Appellant submits a check in the amount of $105.00 for the fees of appealing the complaint. Appellant apologizes that he did not know how the U.S. Court systems work. So, he got the order of dismissal. The last communication that I received from the appeals court on 3-3-98, I interpreted it as that if I did not pay the fees in time given, the process of dismissing the case would be initiated. So, I thought I gave a I a last reminder, attached, to the district court, and wait until the time I get the notice of initiating the dismissal process. I was wrong.

Appendix G

WHEREFORE, this humble appellant prays the Hon. Appeals Court recall the mandate and adjudicate the complaint filed long time ago.

Respectfully submitted,

Date: 4-6-98 Phone:301-513-9164

s/ Abdul Aziz

Abdul Aziz, Ph.D., Plaintiff pro se, 9179 Springhill Lane, Greenbelt, MD 20770-1245

Reminder: 2nd reminder: Date: 03 05 1998: As requested in the certified letter below, dated 01 13 1998, kindly send me the transcript described below. I have got a notice to pay $105 to this court by 03 09 1998 from the Court of Appeals. Otherwise, I shall have complications.

_____ 03 03 1998

Reminder: Date: 03 01 1998

This is a reminder of the request below. Without the transcript of the bench hearing as referred to in the court order to dismiss, I cannot make a determination to file the appeal.

Respectfully submitted,

_____

Appendix G

Z 114 051 115

UNITED STATES DISTRICT COURT :
FOR THE EASTERN DISTRICT OF VA

No. CA 97-1969-A

Transcript requested

Mailed on 01 13 1998

ABDUL AZIZ, Plaintiff,

vs.

ORBITAL SCIENCE CORPORATION, Defendant.

PLAINTIFF'S NOTICE OF APPEAL OF
COURT ORDER DATED 1-16-98

Kindly send me a transcript of the hearing of the case and bill me.

Respectfully submitted,

Date: 2-13-98 Phone:301-513-9164
Abdul Aziz, Ph.D., Plaintiff pro se, 9179 Springhill Lane, Greenbelt, MD 20770-1245

APPENDIX H — LETTER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DATED MARCH 11, 1998

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
LEWIS F. POWELL, JR. UNITED STATES
COURTHOUSE ANNEX
1100 EAST MAIN STREET, SUITE 501
RICHMOND, VIRGINIA 23219-3538

PATRICIA S. CONNOR
CLERK

TELEPHONE
(804)771-2213

March 11, 1998

NOTICE OF INTENT TO DISMISS
****

Abdul Aziz
9179 Springhill Lane
Greenbelt, MD 20770

Re: 98-1281 Aziz v. Orbital Sciences
CA-97-1769-A

Dear Mr. Aziz:

The court will dismiss your appeal for want of prosecution on 3/26/98, unless by that date you have complied with Rule 3(e) of the Federal Rules of Appellate Procedure by paying the required $105 docketing and filing fee to the clerk of the district court, or have otherwise remedied the fee default. You were advised on 2/27/98 of your need to pay the required fee or apply for leave to proceed in forma pauperis.

Appendix H

Enclosed is a copy of Local Rule 45, Dismissals for Failure to Prosecute.

Yours truly,

PATRICIA S. CONNOR
Clerk

By: /s/ Cynthia W. Carter
Deputy Clerk

Enclosure(s)

cc: Jeffrey Eden Weinstein
Norman H. Meyer Jr.

Appendix H

LOC. R.45 DISMISSALS FOR FAILURE TO PROSECUTE

****

When an appellant in either a docketed or non-docketed appeal fails to comply with the Federal Rules of Appellate Procedure or the rules or directives of this Court, the clerk shall notify the appellant and appellant's counsel that upon the expiration of 15 days from the date thereof the appeal will be dismissed for want of prosecution, unless prior to that date appellant remedies the default. Should the appellant fail to comply within said 15-day period, the clerk shall then enter an order dismissing said appeal for want of prosecution, and shall issue a certified copy thereof to the clerk of the district court as and for the mandate. In no case shall the appellant be entitled to reinstate the case and remedy the default after the same shall have been dismissed under this rule, unless by order of this Court for good cause shown. The dismissal of an appeal shall not limit the authority of this Court, in an appropriate case, to take disciplinary action against defaulting counsel.

FRAP 3.(e) PAYMENT OF FEES

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Upon the filing of any separate or joint notice of appeal from the district court, the appellant shall pay to the clerk of the district court such fees as are established by statute, and also the docket fee prescribed by the Judicial Conference of the United States, the latter to be received by the clerk of the district court on behalf of the court of appeals.

APPENDIX I — LETTER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DATED FEBRUARY 27, 1998

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
LEWIS F. POWELL, JR. UNITED STATES
COURTHOUSE ANNEX
1100 EAST MAIN STREET, SUITE 501
RICHMOND, VIRGINIA 23219-3538

PATRICIA S. CONNOR
CLERK

TELEPHONE
(804)771-2213

February 27, 1998

Abdul Aziz
9179 Springhill Lane
Greenbelt, MD 20770

Jeffrey Eden Weinstein, Esq.
ECKERT, SEAMANS, CHERIN & MELLOTT
1250 24th Street, NW
Suite 700
Washington, DC 20037

Re: 98-1281 Aziz v. Orbital Sciences
CA-97-1769-A

Dear Mr. Aziz & Counsel:

The appeal was docketed in this Court on 2/27/98, pursuant to Rule 12(a) of the Federal Rules of Appellate Procedure. Docket number 98-1281 should be placed on all papers subsequently submitted to this Court.

Appendix I

The appellant must pay the $105 fee for filing and docketing the appeal to the clerk of the district court (Rule 3(e), FRAP). Should the appellant be financially unable to pay the cost of appeal, appellant may file a motion for leave to appeal in forma pauperis with the district court (Rule 24(a), FRAP). These requirements must be met within ten days of the date of this letter or we will initiate the process set forth in this Court's Local Rule 45 to dismiss the appeal for want of prosecution.

Yours truly,

PATRICIA S. CONNOR
Clerk

By: /s/ Cynthia W. Carter
Deputy Clerk

cc: Norman H. Meyer Jr.